THE HON'BLE SRI JUSTICE K.C. BHANU

W.P.No.11533 OF 2002

Date: 17-08-2005

Between:

G.Sugunarao S/o manashe , aged 73 years,

Retired Teacher, I.C.M.Elementary School,

Gannaaram, Mandaalli Mandal, Krishna District.

..... PETITIONER

AND

1 The Government of Andhra Pradesh, rep. by its

Secretary, Education Department,

Secretariat Buildings, Hyderabad and others.

RESPONDENTS

THE HON'BLE SRI JUSTICE K.C. BHANU

W.P.No.11533 OF 2002

ORDER:

Challenging the proceedings of the first respondent in Memo No.2482/PS.1/1998-7, dated 30-06-2000, as illegal and arbitrary and consequently to direct the respondents to ratify the petitioner's repatriation to the fourth respondent school to pay the salaries and all other benefits for the service rendered, the present writ petition is filed.

The brief facts that are necessary for the disposal of the present writ petition may be stated as follows:

The petitioner was appointed as a Higher Grade Teacher in the fourth respondent school on 07-04-1947, which is a Minority society and running with the aid of the Government. Thereafter, the management of the school deputed his services on 04-03-1965 to the church as a Paster. The Government was paying the grant-in-aid to the fourth respondent school, proportionate to the strength of the children and number of teachers and the management uses to pay salaries to the teachers out of the said grant. At the time of petitioner's deputation, respondents 1 to 3 did not raise any objection. The deputation was entered in the petitioner's service register and the same was countersigned by the Deputy Inspector of Schools, Chintalapudi. On 13-11-1985, the petitioner was repatriated to the fourth respondent school, where he served as a Second Grade Teacher till the date of his retirement on 30-05-1988. The respondents did not pay the salaries to the petitioner from 13-11-1985 onwards and

pension after his retirement. The management of the school had sent proposals for approval of the petitioner's repatriation and release of his salaries. The second respondent passed an order on the said proposals, in Rc.No.725/B4-1/TG-2/87, dated 18-11-1987, stating that the Government orders are awaited in a similar case, where Higher Grade Teacher was appointed as Secondary Grade Teacher. Subsequently, the Government passed orders in the case referred above, vide memo dated 06-01-1988, directing the Director of School Education to approve the appointment of Higher Grade Teacher in the Aided Secondary Grade Teacher post. But, the second respondent having stated that the Government orders are awaited in a similar case, rejected the approval of the petitioner's case vide Rc.No.725/TG.2/87, dated 30-05-1988 on the ground that his transfer to the foreign service was without prior permission. Aggrieved by the same, the fourth respondent school preferred an appeal to the first respondent. As no orders were passed on the said appeal, the petitioner

filed W.P.No.787 of 1997 before this court and the same was disposed of directing the first respondent to pass appropriate orders. The first respondent passed the impugned orders dated 30-06-2000 on the said appeal rejecting to regularize the gap period of service of the petitioner to Foreign Department from 04-03-1965 to 13-11-1985 and rejected salaries for the service rendered from 13-11-1985 to 24-04-1988 on the ground that no prior permission was obtained for his deputation to the foreign service. Challenging the same, the present writ petition has been filed.

A counter affidavit has been filed by the third respondent stating that the petitioner joined on 07-04-1947 and the management has deputed him on 04-03-1965 as a Paster to

the church on his willing and without any permission from

the competent authority. The competent authority has no information about the deputation of the petitioner. It is the responsibility of the management of the school to obtain prior permission from the competent authority in respect of service matters of

the teachers where the institution was receiving grant-in-aid from the Government. It is further stated that the petitioner's salary was paid from the Government Grant-in-aid for the period from 07-04-1947 to 04-03-1965 and for the remaining service period, the salary has to be paid by the management as the management has utilized his services to their religious activities as a Paster. Hence, there are no grounds to interfere with the impugned proceedings.

The learned counsel appearing for the petitioner contended that, originally, the petitioner was deputed to work as a Paster on 04-03-1965 in the Church by the same management and

on 13-11-1985, he was repatriated to the School and after attaining the age of superannuation, he retired from service on 30-05-1988; that at the time of his deputation, only the school was being granted aid, but not the employees; that at the time of deputation and also at the time of repatriation, the entries in the service register of the petitioner have been countersigned, therefore, it is deemed that the deputation as well as repatriation have been accepted by the competent authority, and therefore, the petitioner is entitled for the terminal benefits for his entire service period and hence, he prays to allow the writ petition.

On the other hand, the learned Government Pleader appearing for the respondents contended that no prior permission was taken from the Government by the management before sending the petitioner on deputation; that at the time of deputation, the fourth respondent school was being received grant-in-aid and if such is the case, the management cannot depute the school teachers for any other purpose; that the impugned proceedings have been passed in view of the fact that no prior permission from the Government was received and hence, there are no grounds to interfere with the impugned proceedings.

The petitioner was appointed as a Higher Grade Teacher in the fourth respondent school on 07-04-1947, which is running with the aid of the Government. The fourth

respondent school was established by the Indian Christian Mission, which is a Minority society. The petitioner was deputed to serve as a Paster in the church on 04-03-1965. No Rules or administrative instructions were brought to the notice of this Court that in a situation like the deputation, when the school is receiving grant-in-aid, what is the procedure to be followed. Be that as it may, admittedly, the fourth respondent school is running with the aid of the Government. No doubt, the post of Paster, in which the petitioner was working, is not directly admitted into grant-in-aid, but at the same time, in respect of all the posts, the management was receiving aid. The sole ground, on which the case of the petitioner was rejected, is that no prior permission of the Government was taken before deputing the petitioner to work as a Paster in the year 1965. Therefore, the period from 13-11-1985 to 24-04-1988 cannot be regularized or condoned.

The learned counsel appearing for the petitioner placed reliance on the service register of the petitioner and some other persons, wherein the Deputy Inspector of Schools countersigned the entry relating to deputation and also repatriation to the fourth respondent school. As seen from the service register, an endorsement was made that on 04-03-1965, the services of the petitioner were lend to mission to serve as a Paster. The said endorsement is not substantiated any material in the service register to show that it was made after prior approval from the competent authority. This document would only indicate that it has been countersigned by the Deputy Inspector of Schools, but in respect of which endorsement, the Deputy Inspector of Schools has countersigned, is not known.

Having come to the Court, it is for the petitioner to establish that he was deputed to work as a Paster by the fourth respondent school after duly obtaining permission from the competent authority in view of the fact that the school was being received grant-in-aid from the Government. So also, it is for the petitioner to prove and establish that his repatriation was approved by the competent authority in the

year 1985.

It is contended by the learned counsel appearing for
the petitioners that when the petitioner was repatriated
on 13-11-1985, the same was approved by the competent authority. But, as seen from the copy of the service register, there is no indication that his repatriation to the fourth respondent school was approved by the competent authority.
To substantiate his contention, the petitioner also failed to file any document that his repatriation was approved by the competent authority in the year 1985. Unless the deputation is validly made, the petitioner is not entitled for continuation of the deputation period. For about 20 years, he served as a Paster on deputation by fourth respondent school. If the petitioner is entitled for any terminal benefits, he is entitled for the same from the fourth respondent school. Since the school is being received grant-in-aid, the management cannot utilize the services of the teachers other than the purpose for which they were appointed. Even though the posts are not admitted into grant-in-aid, but the salaries of the teachers are being paid from out of the grant-in-aid funds received from the Government. Therefore, the services rendered by the petitioner as a Paster in the church cannot be counted for releasing the terminal benefits.

The fourth respondent school has not filed any counter affidavit that whether the lien of the petitioner is continued or whether the management has taken any prior permission from the competent authority before sending the petitioner to the church as a Paster. It is also not known whether any other person was appointed in the place of the petitioner in the fourth respondent school. If some other person was appointed in the fourth respondent school in the place of the petitioner, while he was on deputation, the question of counting service for the purpose of terminal benefits does not arise. There is no factual foundation with regard to subsistence of lien, appointment or non-appointment of a person in the place of the petitioner's post and

approval from the competent authority at the time of deputation as well as repatriation. Therefore, the relief claimed by the petitioner cannot be granted.

The petitioner contends that his case was discriminated in view of the fact that the case of one D.David Samuel had been considered and ratified the repatriation. There is no factual foundation with regard to how long the said David Samuel was on deputation and under what circumstances he was repatriated and that the case of David Samuel is similar and identical with that of the case of the petitioner. So, in the absence of any factual foundation, the question of discrimination does not arise.

Therefore, the writ petition is totally devoid of merit and accordingly dismissed. No order as to costs.

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JUSTICE K.C.BHANU

Date: 17-08-2005.

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